



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI- 82-107

You are the Town Counsel for the Town of ABC (Town) and have requested an advisory opinion from the Commission over the application of G.L.c. 268A, s.20,[1] as most recently amended by St. 1982, c. 107,[2], on behalf of X who was elected in May, 1982 as a Town selectman. Prior to X's election, he served on a part-time basis as a police officer for the Town, and he was reappointed annually to the position by the Board of Selectmen upon the recommendation of the Police Chief. Following X's election as a selectman, the Police Chief submitted X's name, along with approximately ten other officers, to the Board of Selectmen for annual reappointment. You ask whether the provision within St. 1982, c. 107 prohibiting members of boards of selectmen from eligibility for appointment to a second municipal position operates to prohibit X's reappointment as a police officer while he serves on the Board of Selectmen. The Commission advises you that it does not.

Although the Commission does not ordinarily render advisory opinions over the application of G.L.c. 268A to municipal employees and will instead refer municipal questions to Town Counsel under G.L.c. 268A, s.22, the Commission deems it appropriate to render an opinion on the question of law which you have raised. Since May, 1982 the Commission has received several comparable inquiries from municipal officials and Town Counsels over the interpretation of G.L.c. 268A, s.20 in light of the enactment of St. 1982, c. 107. The opinion which you seek would therefore be of general application and would provide a uniform interpretation to communities similarly situated. See, EC-COI-80-89; 82-25. In rendering this opinion, the Commission has relied upon the facts as you have stated them and has not made an independent investigation of those facts.

Prior to the enactment of St. 1982, c. 107, it was unlawful for an employee of the Town to hold the office of Town selectman and to receive compensation for both positions. See, G.L.c. 268A, s.20; *Walsh v. Love*, Norfolk Superior Court Civil Action No. 132687 (July 2, 1981) which held that the teacher-selectman arrangement violated s.20; EC-COI-80-89. In response to this prohibition, the General Court considered proposals during the 1982 legislative session to allow the dual status of selectman and employee. During the consideration of these proposals, the General Court was made aware of concerns over potential abuses in the dual status arrangement in particular where selectmen could potentially acquire other municipal positions by virtue of their incumbency in the office of selectman. In response to this concern, the General Court adopted an amendment to House Doc. No. 1657 which prohibited selectmen from eligibility for appointment to an additional municipal position. This amendment was retained in the final language amending s.20 which was approved by the Governor as St. 1982, c. 107.

The Commission concludes that the scope of the aforementioned limitation on appointment eligibility was intended to cover only new, post-elective appointments to municipal positions and was not intended to prohibit municipal employees from eligibility for reappointment to positions held immediately prior to their election as selectmen. This conclusion is consistent with the corrective purpose of St. 1982, c. 107 which was to permit municipal employees to serve simultaneously as selectmen. Moreover, the title of St. 1982, c. 107 ("An act providing that a person shall not be prohibited from holding the office of selectman in a town because such person is an employee of the Town") reflects an intent to allow incumbent municipal employees to also hold the office of selectman while continuing municipal employment. To construe s.20 so that a selectmen could not be eligible for reappointment for positions held prior to election would, in effect, nullify the legislative purpose in enacting St. 1982, c. 107, and would be inconsistent with the Commission's obligation to give G.L.c. 268A a workable meaning. See, *Graham v. McGrail*, 370 Mass 133, 140 (1976).

Accordingly, the Commission advises you that Mr. X would not violate G.L.c. 268A, s.20 by his reappointment as police officer following election as selectman. He would, however, remain subject to other restrictions in s.20, in particular, those prohibiting him from participating as a selectman in a matter within the purview of the police department and prohibiting him from receiving more than one municipal salary.

[1] G.L.c. 268A, s.20 provides, in pertinent part, as follows:

- (a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

[2] This most recent amendment adds the following language to s.20:

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office.

Provided that no such member may vote or act on any matter which is within the purview of the agency by which, he is employed or over which he has official responsibility, and provided further that no member shall be eligible for appointment to such additional position while a member or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties require. No such selectman shall receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive.